

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JOHN WAGNER,

Petitioner,

v.

**Civil Action No. 5:07cv96
(Judge Stamp)**

WARDEN, USP-MARION,

Respondent.

OPINION/REPORT AND RECOMMENDATION

On July 30, 2007, the Court received a letter from the petitioner, a federal inmate, in which he asserted that the Bureau of Prisons (“BOP”) was improperly computing his sentence. Attached to the petitioner’s letter were copies of his attempts to have his sentence “corrected” through the BOP’s administrative remedy program. Because the petitioner’s letter sought the Court’s assistance with the computation of his sentence, the letter and attached documents were construed as a petition for writ of habeas corpus under 28 U.S.C. § 2241.

In light of the Court’s construction of the petitioner’s letter as a habeas petition, on August 7, 2007, the undersigned directed the petitioner to file an amended petition on the standard § 2241 forms utilized by this Court, so the petitioner could more thoroughly present his claim. In addition, the petitioner was advised that there is a required \$5.00 filing fee for filing a habeas corpus action. The petitioner was directed to file an amended petition, and to pay the required filing fee or file a request to proceed as a pauper, within thirty (30) days from the date of the Order.

However, a review of the file as of this date shows that the petitioner has filed neither an amended petition nor a request to proceed as a pauper. Thus, it appears that the petitioner did not

intend to initiate a habeas corpus action through his letter. Accordingly, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, it is the undersigned's recommendation that the petition be **DISMISSED without prejudice** for the failure to prosecute.

Within ten (10) days after being served with a copy of this Opinion/Report and Recommendation, any party may file with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections shall also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket. The Clerk is further directed to provide copies of this Opinion/Report and Recommendation to all counsel of record, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: September 19, 2007.

/s John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE